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Power of Courts

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insignificant clerical errors.”⁷⁴ This interpretation is in complete accord with the status of New York law.

The development of the issue of amending an indictment by a grand jury has been the same in both the federal and New York jurisdictions. The common law principle was very strict, in that amendments were not at all permitted. In modern times, the rule has evolved to allow for some modification of an indictment, but only to the extent that such alteration relates only to the most basic elements of form.

SUPREME COURT

KINGS COUNTY

People v. Williams⁷⁵
(decided December 9, 1994)

In *Williams*, the constitutional issue raised was whether the supreme court could retain jurisdiction over a suppression motion stemming from a weapons charge, involving a juvenile, after it had been severed from other charges.⁷⁶ After examining article VI, sections 7(a) and (b) of the New York State Constitution,⁷⁷

74. *Id.* at 194. See *United States v. Field*, 875 F.2d 130 (7th Cir. 1989) (quoting *United States v. Field*, 659 F.2d 163, 167 (D.C. Cir. 1981) (stating that amendments were permitted regarding matters of form); *United States v. Nabors*, 762 F.2d 642 (8th Cir. 1985) (eliminating mere surplusage is allowable).

75. 1994 WL 744862, at *1 (Sup. Ct. Kings County Dec. 9, 1994). This case, pending publication, will be reported at 622 N.Y.S.2d 654.

76. *Id.* at *2. The court's decision to sever the weapons counts from the robbery counts was based on the fact that “[t]he evidence of one offense would not have been admissible at the trial of the other, since there was no indication that the same weapon was involved.” *Id.* at *3.

77. N.Y. CONST. art. VI, § 7. Article VI, section 7 provides:

a. The supreme court shall have general original jurisdiction in law and equity and the appellate jurisdiction herein provided. In the city of New York, it shall have exclusive jurisdiction over crimes prosecuted by indictment, provided, however, that the legislature may grant to the

the court found that “[a]s juvenile delinquency proceedings are statutory creations, the constitution automatically vests the supreme court with jurisdiction over them.”⁷⁸ Therefore, the court held that the supreme court had jurisdiction over the suppression motion when acting as a family court in a juvenile proceeding.⁷⁹

In *Williams*, the defendant was charged with armed robbery based on events which occurred on September 5, 1993, and criminal possession of a weapon based on events which occurred on September 15, 1993.⁸⁰ The defendant made a motion for a *Dunaway*,⁸¹ *Payton*,⁸² *Mapp*,⁸³ and *Wade*⁸⁴ hearing which was

city-wide court of criminal jurisdiction of the city of New York jurisdiction over misdemeanors prosecuted by indictment and to the family court in the city of New York jurisdiction over crimes and offenses by or against minors or between spouses or between parent and child or between members of the same family or household.

b. If the legislature shall create new classes of actions and proceedings, the supreme court shall have jurisdiction over such classes of actions and proceedings, but the legislature may provide that another court or other courts shall also have jurisdiction and that actions and proceedings of such classes may be originated in such other court or courts.

Id.

78. *Williams*, 1994 WL 744862, at *4 (citing *Kagan v. Kagan*, 21 N.Y.2d 532, 536-37, 236 N.E.2d 475, 477-78, 289 N.Y.S.2d 195, 199-200 (1968)). The *Kagan* court held that the “jurisdiction of the Supreme Court, as provided for under any other provision of the Constitution should be unaffected by this grant of jurisdiction to the Family Court.” *Kagan*, 21 N.Y.2d at 537-38, 236 N.E.2d at 478, 289 N.Y.S.2d at 200.

79. *Williams*, 1994 WL 744862, at *3.

80. *Williams*, 1994 WL 744862, at *1.

81. A *Dunaway* hearing concerns suppression of the prosecutor’s evidence. The issue generally is whether the police had probable cause to arrest the defendant. *See Dunaway v. New York*, 442 U.S. 200 (1979).

82. A *Payton* hearing concerns the suppression of physical evidence. The issue generally is whether the police made a warrantless and nonconsensual entry into the defendant’s home in order to make an arrest. *See Payton v. New York*, 445 U.S. 573 (1980).

83. “A *Mapp* hearing concerns the suppression of physical evidence. The issue generally is whether the police had probable cause, or the defendant’s consent, to conduct the search of either the defendant’s person or property.” MULDOON & FEUERSTEIN, *HANDLING A CRIMINAL CASE IN NEW YORK*, § 7:19 (1994) (citations omitted).

granted.⁸⁵ He also requested that the weapon counts be severed.⁸⁶ This, as well, was granted, following the hearing.⁸⁷ The defendant was then tried and acquitted of the robbery counts, but the court still had not decided the suppression motion regarding the weapon counts.⁸⁸ In July 1994, the People requested the court to remove the weapons count to family court, claiming that the supreme court lost jurisdiction over this count at the time of severance, and that "it must now remove those counts to family court or dismiss the case without taking any further action."⁸⁹

The court recognized that "the age of a defendant goes to the jurisdiction, [however, courts have] not discuss[ed] the type of jurisdiction at issue."⁹⁰ The *Williams* court discussed the reasoning employed in *People ex rel. Harrison v. Jackson*.⁹¹ In *Jackson*, the majority failed to provide any guidance as to "whether age goes to subject matter jurisdiction."⁹² However, the dissent stated that "those under sixteen years of age cannot be convicted of crimes, and that the courts (other than children's

84. Muldoon and Feuerstein have defined a *Wade* hearing as follows:

A *Wade* hearing concerns police-initiated identifications of the defendant, made either at the time and place of the offense, or on some other occasion. The issue generally is the reasonableness of police conduct, and the lack of suggestiveness, in conducting the identification. If the identification is found to be objectionable, the issue is whether the witness has an independent source upon which to ground an in-court identification.

Id. (citations omitted).

85. *Williams*, 1994 WL 744862, at *1.

86. *Id.*

87. *Id.*

88. *Id.*

89. *Id.*

90. *Id.* (citing *People v. Stevenson*, 17 N.Y.2d 682, 216 N.E.2d 615, 269 N.Y.S.2d 458 (1966)). In *Stevenson*, the court held that the case had to be remanded to Family Court because the defendant was under the age of sixteen. *Stevenson*, 17 N.Y.2d 682, 216 N.E.2d 615, 269 N.Y.S.2d 458.

91. 298 N.Y. 219, 82 N.E.2d 14 (1948).

92. *Williams*, 1994 WL 744862, at *2.

courts) are wholly without jurisdiction to try or sentence such persons.”⁹³

The court went on to discuss the amendments to the Criminal Procedure Law and how they have changed the court’s power to deal with children under sixteen.⁹⁴ In 1978, a class of designated offenses was created which held thirteen, fourteen, and fifteen year-old defendants criminally liable.⁹⁵ Then, in 1980, a new law

93. *Jackson*, 298 N.Y. at 234-35, 82 N.E.2d at 22 (Desmond, J., dissenting).

94. *Williams*, 1994 WL 744862, at *2.

95. *Id.* (citing N.Y. CRIM. PROC. LAW § 190.71 (McKinney 1993) and N.Y. PENAL LAW § 30.00(2) (McKinney 1994)). Section 190.71 provides in relevant part:

[A] grand jury may not indict

- (i) a person thirteen years of age for any conduct or crime other than conduct constituting a crime defined in subdivisions one and two of section 125.25 (murder in the second degree);
- (ii) a person fourteen or fifteen years of age for any conduct or crime other than conduct constituting a crime defined in subdivisions one and two of section 125.25 (murder in the second degree) and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible

N.Y. CRIM. PROC. LAW § 190.71; N.Y. PENAL LAW § 30.00(2) provides in pertinent part:

A person thirteen, fourteen or fifteen years of age is criminally responsible for acts constituting murder in the second degree as defined in subdivisions one and two of section 125.25 and in subdivision three of such section provided that the underlying crime for the murder charge is one for which such person is criminally responsible; and a person fourteen or fifteen years of age is criminally responsible for acts constituting the crimes defined in section 135.25 (kidnapping in the first degree); 150.20 (arson in the first degree); subdivisions one and two of section 120.10 (assault in the first degree); 125.20 (manslaughter in the first degree); subdivisions one and two of section 130.35 (rape in the first degree); subdivisions one and two of section 130.50 (sodomy in the first degree); 130.70 (aggravated sexual abuse); 140.30 (burglary in the first degree); subdivision one of section 140.25 (burglary in the second degree); 150.15 (arson in the second degree); 160.15 (robbery in the first degree) or subdivision two of section 160.10 (robbery in the second degree) of this chapter; or defined in this chapter as an attempt to commit murder in the second degree or kidnapping in the first degree.

Id.

was invoked which gave grand juries the authority to indict juvenile offenders for “non-designated offenses” if the offense is properly joinable to a designated offense under CPL 200.20(6)”⁹⁶ The *Williams* court emphasized the importance of these amendments by stating that these laws conferred subject matter jurisdiction upon the supreme court over offenses that were previously adjudicated in family court.⁹⁷

The court recognized the rule, from *In re Anthony J.*,⁹⁸ which states that “a court may not acquire subject matter jurisdiction by waiver, consent, estoppel, or laches.”⁹⁹ However, there is an exception to this rule when a court has subject matter jurisdiction, but there is a challenge as to the court’s jurisdiction over a specific case.¹⁰⁰ The court found such exception applied

96. *Williams*, 1994 WL 744862, at *2. See N.Y. CRIM. PROC. LAW § 200.20(6) (McKinney 1993). Section 200.20(6) provides:

Where an indictment charges at least one offense against a defendant who was under the age of sixteen at the time of the commission of the crime and who did not lack criminal responsibility for such crime by reason of infancy, the indictment may, in addition, charge in separate counts one or more other offenses for which such person would not have been criminally responsible by reason of infancy if:

- (a) the offense for which the defendant is criminally responsible and the one or more other offenses for which he would not have been criminally responsible by reason of infancy are based upon the same act or upon the same criminal transaction, as that term is defined in subdivision two of section 40.10 of this chapter; or
- (b) the offenses are of such nature that either proof of the first offense would be material and admissible as evidence in chief upon a trial of the second, or proof of the second would be material and admissible as evidence in chief upon a trial of the first.

Id.

97. *Williams*, 1994 WL 744862 at *2. Cf. *Rodriguez v. Myerson*, 69 A.D.2d 162, 418 N.Y.S.2d 936 (2d Dep’t 1979) (stating that the Supreme Court had no jurisdiction to hear a juvenile delinquency proceeding).

98. 143 A.D.2d 668, 532 N.Y.S.2d 924 (2d Dep’t 1988).

99. *Williams*, 1994 WL 744862, at *2.

100. *Id.* See *In re Rougeron’s Estate*, 17 N.Y.2d 264, 271, 217 N.E.2d 639, 643, 270 N.Y.S.2d 578, 583 (1966). “[T]he rule that subject-matter jurisdiction cannot be born of waiver, consent, or estoppel has to do with those cases only where the court has not been given any power to do anything at all” *Id.*

to the instant case because, although it had jurisdiction over the non-designated offenses, there was an issue as to whether there was proper joinder of the offenses.¹⁰¹

The court found that the robbery and weapon counts should be severed.¹⁰² It based its decision on several grounds. First, the issue involving the defendant's juvenile status was only raised when the indictment was amended, not when it was before the grand jury.¹⁰³ Second, the issue concerning joinder of the counts was not raised until the suppression hearing.¹⁰⁴ It was not until the hearing was concluded that the court decided it would sever the counts.¹⁰⁵ At this time, decision on the weapon counts was reserved.¹⁰⁶

It was only when the People moved to have the case removed to family court that the defendant raised the issue of jurisdiction.¹⁰⁷ Since the robbery and weapon counts were related on the issues of suppression, the court found that the supreme court had jurisdiction over both counts until it made its decision to sever the robbery counts.¹⁰⁸

The *Williams* court noted that, even if the court did not have jurisdiction as a criminal court, because the weapon count was improperly joined, the court would have had jurisdiction anyway as a family court.¹⁰⁹ The court based its conclusion on the New York Constitution, article VI, section 7(b).¹¹⁰ Section 7(b) "confers the [s]upreme [c]ourt with jurisdiction not just over classes of actions created after [it was adopted], but also classes

101. *Williams*, 1994 WL 744862, at *2.

102. *Id.* at *3.

103. *Id.* The court based its conclusion on the fact that "[t]he evidence of one offense would not have been admissible at the trial of the other, since there was no indication that the same weapon was involved." *Id.*

104. *Id.*

105. *Id.*

106. *Id.*

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* See N.Y. CONST. art. VI, § 7(b).

recognized at the time of its adoption.”¹¹¹ Therefore, section 7(b) gave the supreme court “‘original, unlimited, and unqualified jurisdiction.’”¹¹² The court also noted that the substantive law relating to suppression motions were very similar or the same in both the family court and the supreme court. Moreover, the supreme court had already held a hearing and, thus, was better able to decide certain issues such as credibility.¹¹³

In conclusion, although it may be the legislature’s desire that the family court handle the sensitive matters involved in juvenile delinquency proceedings, such concerns no longer exist where the court is “deciding a suppression motion after a hearing involving the same issue.”¹¹⁴ Consequently, it is evident that the supreme courts of New York will always retain their power of original jurisdiction, expressly granted by the New York State Constitution, where such protections have been waived by a prior disposition of the same issue and the procedural rules pertaining to suppression possess no material differences.

CIVIL COURT

NEW YORK COUNTY

Commissioners of State Insurance Fund v. Duralum Corp.¹¹⁵
(printed May 6, 1994)

The Special Term, First Department addressed the issue of whether a party being sued by an agency of the State of New York in a civil court action can institute a counterclaim against that agency in the Civil Court or whether the suit must be

111. *Williams*, 1994 WL 744862, at *3 (citing *Kagen v. Kagen*, 21 N.Y.2d 532, 537, 236 N.E.2d 475, 478, 289 N.Y.S.2d 195, 200 (1968)).

112. *Id.* at *4 (citing *Kagen*, 21 N.Y.2d at 537, 236 N.E.2d at 478, 289 N.Y.S.2d at 199).

113. *Williams*, 1994 WL 744862, at *3.

114. *Id.* at *4.

115. N.Y. L.J., May 6, 1994, at 31 (Civ. Ct. New York County 1994).